

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.838 OF 2006

Gram Panchayat Chulne
Now Navghar Manikpur Nagar Parishad Appellant/ Orig.Def.

V/s.

Sou.Anjeline Michael Faroz Respondent/Orig.Plaiff.
Mr.A.G. Damle for Appellant.
Mr.G.S. Godbole i/b. A.M. Kulkarni for Respondent.

CORAM : V.M. KANADE, J.

DATED : 12th JULY, 2007.

P.C:-

1. Heard learned counsel for the Appellant and learned counsel for Respondent.
2. The Appellant is original defendant Gram Panchayat Chulne which is now Navghar Manikpur Nagar Parishad, is challenging the judgment and order passed by the Additional District Judge, Palghar whereby it has modified decree which is passed in favour of Respondent/Plaintiff.
3. Brief facts are that the Respondent filed suit for Perpetual

Injunction restraining the Appellant from disturbing possession of property Survey No.50 Hissa No.1. It is case of the Appellant herein that Appellant does not dispute ownership of Respondent in respect of Survey No.50 Hissa No.1. It is further contended by the Appellant in their written statement that there was Bund on the boundary of Survey No.50 Hissa No.1 which was used as public road by the villagers and since Bund was not part of the property of the Respondent, the Respondent was not entitled to seek injunction in respect of said Bund. The Trial Court dismissed the suit of the Respondent. Against the said order, the Respondent preferred appeal. Initially, appeal was also dismissed. However, Respondent preferred second appeal in this Court and this Court remanded back matter to the lower Appellate Court with direction that the Appellate Court should appoint T.I.L.R, as a Court Commissioner to carry out measurement of the property and to prepare sketch and submit report in the Court to decide the appeal. Permission was also granted to the parties to led additional evidence. Accordingly, T.I.L.R, Vasai was appointed as a Court Commissioner. He was examined as a witness in the appeal. The Appellate Court allowed the appeal filed by the

Respondent and modified relief which was claimed by the Respondent in the plaint and directed that the Appellant should not disturb possession of Survey No.50 Hissa No.1 and Appellant was restrained from causing any obstruction by way of constructing a road for the public use through the suit property.

4. Learned counsel for Appellant submitted that the Lower Appellate Court had not taken into consideration fact that T.I.L.R, in his evidence has admitted that road or Bund was not in existence on the date when the measurement was carried out. He submitted that since Bund was not in existence, there was no question of granting injunction in favour of the Respondent. He invited my attention to the evidence recorded by the lower Appellate Court and submitted that the lower Appellate Court had not considered directions which were given by this Court when the matter was remanded back and he submitted that essential question which was to be decided by the lower Appellate Court was regarding existence or otherwise of the Bund on the property of the Respondent, which has not been considered by the lower Appellate Court. He submitted that

therefore, said order was liable to be quashed and set aside.

5. It is not possible to accept the submissions made by the learned counsel for the Appellant. The lower Appellate Court after taking into consideration sketch submitted by T.I.L.R and also after appreciating evidence of the T.I.L.R, has modified relief which was claimed by the Respondent and has clearly stated that Appellant and villagers should not disturb the possession of the Respondent over the suit property bearing No.50 Hissa No.1 of Village Chulne and they are further restrained from causing obstruction by constructing a road on the said property Survey No.50 Hissa No.1. Therefore, submissions made by the learned counsel for the Appellant can not be accepted. No substantial question of law is raised in the Second Appeal. Second Appeal is dismissed accordingly.

V.M. KANADE, J.